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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the) CC Docket No. 96-128
Pay Telephone Reclassification and)
Compensation Provisions of the)
Telecommunications Act of 1996)
)
AirTouch Paging Petition for Waiver)
of Payphone Compensation Obligations)

To: The Commission

APPLICATION FOR REVIEW
OF AIRTOUCH PAGING

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SUMMARY

In December 1997, AirTouch requested a partial, limited waiver of the obligation to pay per-call compensation to payphone service providers for calls placed to toll-free numbers from payphones. AirTouch showed that grant of the waiver was warranted under the special circumstances presented. The Bureau denied AirTouch's request.

The Commission's obligation to regulate in the public interest requires that when a waiver request "is stated with clarity and accompanied by supporting data, [it is] not subject to perfunctory treatment, but must be given a 'hard look.'" The Bureau's denial of AirTouch's waiver request failed this test. The Commission will find, on review of the Bureau's decision, that the Bureau did not address in any meaningful way either the legal arguments or the particular circumstances cited by AirTouch in support of its request. Because the decision was not based on any rational waiver policy, as required by law, it was arbitrary and capricious and must be reversed.

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APPLICATION FOR REVIEW

AirTouch Paging ("AirTouch"), by its attorneys and pursuant to Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, seeks review of the *Memorandum Opinion and Order* issued by the Chief, Common Carrier Bureau (the "Bureau") in the above-captioned proceeding.^{1/} In support hereof, the following is respectfully shown:

I. PRELIMINARY STATEMENT

In December 1997, AirTouch requested a partial, limited waiver of the obligation to pay per-call compensation to payphone service providers ("PSPs") for calls placed to subscriber 800/888/887 numbers ("Toll-Free Numbers") from payphones. AirTouch

^{1/} *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, DA 98-181, released March 9, 1998 (the "Bureau Order").

showed that grant of the waiver was warranted under the special circumstances presented -- in particular, the fact that PSPs were not in compliance with obligations that are a prerequisite to their right to receive compensation -- and in order to conform with applicable law.

The Bureau denied AirTouch's request. In reaching its decision, the Bureau abandoned its responsibility to give AirTouch's waiver request a hard look and exercised its authority in a wholly arbitrary and capricious manner. The Commission should promptly remedy the Bureau's error by granting this Application for Review.

II. BACKGROUND

A. The 1996 Act Mandated a Fair Compensation System

Section 276 of the Communications Act of 1934 (the "Act"), enacted as part of the Telecommunications Act of 1996 (the "1996 Act"),^{2/} required the Commission to "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone...."^{3/} Congress required the Commission, in implementing the new law, to "promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public."^{4/}

^{2/} Pub. L. No. 104-104, 110 Stat. 56 (1996).

^{3/} 47 U.S.C. § 276(b)(1)(A).

^{4/} 47 U.S.C. § 276(b)(1).

B. Pursuant to the Congressional Mandate to Create a Fair Compensation Plan, the Commission Established Both a Per-Call Rate and Conditions to Payment of that Rate

In September 1996 the Commission adopted rules implementing Section 276.^{5/}

The *First Payphone Order* established interim and permanent rules for compensating PSPs for originating toll free and other calls from payphones. Under the permanent plan, effective October 6, 1997, “every carrier to whom a completed call from a payphone is routed shall compensate the PSP for the call at a rate agreed upon by the parties.”^{6/} In the absence of a negotiated rate, the rules required compensation at a per-call rate “equal to [the PSP’s] local coin rate at the payphone in question,”^{7/} except that between October 7, 1997 and October 6, 1998, carriers were required to pay a per-call rate of \$0.35 for toll free and access code calls.^{8/} The Commission also imposed a requirement that, by October 7, 1997, local exchange carriers (“LECs”) transmit payphone-specific coding digits (“Coding Digits”) to PSPs, and that PSPs transmit those digits from their payphones to carriers.^{9/}

^{5/} *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *Report and Order*, 11 FCC Rcd. 20,541 (1996) (“*First Payphone Order*”).

^{6/} 47 C.F.R. § 64.1300(a) (1996).

^{7/} 47 C.F.R. 64.1300(c) (1996).

^{8/} 47 C.F.R. § 64.1300(d) (1996).

^{9/} *First Payphone Order*, 11 FCC Rcd. at 20,591.

In November 1996 the Commission affirmed its per-call compensation plan and clarified that “[o]nce per-call compensation becomes effective, ... to be eligible for **such compensation**, payphones will be required to transmit specific payphone coding digits as a part of their ANI.... Each payphone must transmit coding digits that specifically identify it as a payphone, and not merely as a restricted line.”^{10/}

Thus, LECs and PSPs were on notice at least as early as September 1996 that by October 7, 1997 LECs were required to provide Coding Digits and PSPs in turn were required to transmit those digits as an express condition of receiving per-call compensation payments.

C. The Court of Appeals Affirmed the Commission’s Per Call Compensation Plan Based on the Premise that “the Party Incurring the Cost Could Avoid It”

On appeal of the *First Payphone Order* and the *Reconsideration Order* to the U.S. Court of Appeals for the District of Columbia Circuit, the Court vacated the *First Payphone Order* with respect to the per-call rate for toll free and access code calls, but generally upheld other aspects of the Commission’s per-call compensation plan.^{11/} Regarding call blocking, the Court held that the Commission had reasonably concluded

^{10/} *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *Order on Reconsideration*, 11 FCC Rcd. 21,233, 21,265-66 (1996) (“*Reconsideration Order*”) (emphasis added). *See id.* at para. 94 (requiring all payphones to generate 07 or 27 coding digits within the ANI).

^{11/} *Illinois Public Telecommunications Ass’n. v. FCC*, 117 F.3d 555, *clarified on rehearing*, 123 F.3d 693 (D.C. Cir. 1997).

that carriers could implement call blocking.^{12/} Although many LECs and PSPs were parties to the case,^{13/} apparently none of them advised the Court that they would not be technically capable, on a timely basis, of transmitting the required Coding Digits.^{14/} The Court therefore deferred to the Commission's "conclu[sion] that the party incurring the cost could avoid it," stating "[t]hus, a 'buyer' (the carrier or the 800 service subscriber) will have the option of rejecting a 'seller's' (the PSP) excessively priced service."^{15/}

**D. LECs and PSPs Requested and Were Granted
11th Hour Relief from Their Coding Digits Obligations**

On September 30, 1997, just one week before LECs' and PSPs' Coding Digits obligations were to become effective, Ameritech, Bell Atlantic, BellSouth, GTE, NYNEX, SBC, SNET, and U S West -- who collectively constitute approximately 80% of PSPs -- and other PSPs, asked the Bureau to waive indefinitely the deadline for provision of Coding Digits -- but still allow them to receive per-call compensation payments -- because "per-call tracking and payphone coding ... issues cannot be resolved before" October 7, 1997.^{16/} At the same time, the LEC PSPs asked for "clarification" of

^{12/} *Id.* at 564, 566-67.

^{13/} *See id.* at 557-58.

^{14/} *See id.* at 564.

^{15/} *Id.* at 566-67.

^{16/} *See* Petition for Waiver of the United States Telephone Association, September 30, 1997, at p. 2.

their obligations.^{17/} One week after the waiver request was filed, and the same day that per-call compensation became effective under the *First Payphone Order*, the Bureau waived the requirement that LECs provide Coding Digits to PSPs and that PSPs provide Coding Digits from their payphones as a condition of receiving per-call compensation for toll-free and access code calls.^{18/}

E. The AirTouch Waiver Petition Demonstrated Good Cause for Grant of the Requested Relief

On December 15, 1997, AirTouch requested a limited waiver of its obligation to pay any PSP on a per-call basis for Toll-Free Number calls unless and until that PSP provides Coding Digits and AirTouch is able to selectively block such calls from payphones operated by that PSP.^{19/} AirTouch is one of the largest providers of paging and advanced messaging services in the United States, and is a subscriber of Toll-Free Numbers from interexchange carriers ("IXCs"). In addition to using Toll-Free Numbers for its own business, AirTouch assigns such numbers upon request to certain customers

^{17/} See *Public Notice, Pleading Cycle Established for Petitions to Waive Payphone Coding Digits Requirements*, DA 97-2214, released October 20, 1997, para. 3

^{18/} *Order*, DA 97-2162 (Com. Car. Bur., released October 7, 1998) ("*LEC Waiver Order*").

^{19/} Petition for Waiver filed by AirTouch Paging, December 15, 1997, p. 6 ("*AirTouch Waiver Petition*").

who use them in conjunction with AirTouch's local, regional, and nationwide paging services.^{20/}

As AirTouch explained, it has approximately 120,000 customers to whom it has assigned Toll-Free Numbers.^{21/} AirTouch offered these customers the option of blocking calls from payphones and thereby avoid additional charges,^{22/} and approximately 76% have chosen not to accept calls from payphones to their subscriber Toll-Free Numbers.^{23/} If PSPs do not transmit Coding Digits, however, calls cannot be blocked, and AirTouch incurs a substantial financial liability which it can neither avoid nor pass on to its customers.^{24/}

AirTouch also demonstrated that its request was justified because the Bureau's sua sponte waiver of LECs' and PSPs' Coding Digits obligations constituted a material adverse change affecting AirTouch's own rights and obligations as a Toll Free Number subscriber. Waiver of the LECs' and PSPs' obligations without a corresponding limited waiver of AirTouch's obligations thus would be arbitrary and capricious and would result

^{20/} AirTouch Waiver Petition, p. 2.

^{21/} Comments on Petition for Waiver filed by AirTouch, January 15, 1998, p. 2.

^{22/} AirTouch Waiver Petition, p. 9.

^{23/} Reply of AirTouch Paging to Oppositions to Petition for Waiver, January 22, 1998, p. 6.

^{24/} AirTouch Waiver Petition, pp. 1-2.

in substantial harm to AirTouch.^{25/} Moreover, the timing of the LECs' admissions that nearly one-half of payphones would not be capable of transmitting Coding Digits for an indefinite period also constituted a special circumstance, because it precluded a thorough consideration of alternatives to per-call compensation in the absence of call blocking capabilities.^{26/} Finally, AirTouch demonstrated that factors taken into account by the Bureau in granting the LECs a waiver of their Coding Digits obligations also supported AirTouch's request.^{27/}

III. ARGUMENT

A. Denial of the Waiver Constitutes a Violation of the Act's Requirement that PSPs Be Fairly Compensated

Section 276 required the Commission to establish a fair compensation system for all calls placed from payphones.^{28/} In the *First Payphone Order*, the Commission expressly "define[d] fair compensation as where there is a willing seller and a willing buyer at a price agreeable to both."^{29/} To ensure that its compensation plan did not

^{25/} AirTouch Waiver Petition, p. 8.

^{26/} *Id.*

^{27/} *Id.*, p. 10.

^{28/} 47 U.S.C. § 276(b)(1)(A).

^{29/} *First Payphone Order*, para. 52. *See also id.*, para. 20 ("fair compensation can be ensured best when the PSP can track the calls made from the payphone on a call-by-call basis and be assured efficient payment for those calls; when the market can set a fair rate for the call; and when the caller has the information necessary to make an informed

(continued...)

compel payment by an unwilling buyer, and thereby undermine competition in the payphone market, the Commission included in the plan a mechanism for avoiding unwanted payment obligations. Specifically, the Commission required PSPs to transmit Coding Digits that would identify calls placed from payphones,^{30/} thereby enabling the blocking of such calls. Further, the Commission ordered that before a PSP may receive per-call compensation, its payphones “will be required to transmit specific payphone coding digits as a part of their ANI...”^{31/} Thus, by establishing that the obligations of a willing seller (the PSP) and a willing buyer (the payor of per-call compensation) are reciprocal and that the obligation to compensate a PSP on a per-call basis is expressly conditioned upon the provision by PSPs of Coding Digits, the Commission established a fair compensation plan, as required by Section 276.

The Bureau inexplicably failed to concede that forcing AirTouch to pay compensation in the absence of Coding Digits -- which it admitted is the result of its decision^{32/} -- is fundamentally at odds with the Commission’s fair compensation plan, and thus with Section 276. Instead, the Bureau attempted to use the nine-month deadline for

^{29/} (...continued)
choice as to whether to make the call and incur the compensation charge.”) (emphasis added).

^{30/} *First Payphone Order*, 11 FCC Rcd. at 20,591; *Reconsideration Order*, 11 FCC Rcd. at 21,265-266.

^{31/} *Reconsideration Order*, para. 64.

^{32/} *Bureau Order*, para. 97.

Commission action established in Section 276 as a shield for its decision. According to the Bureau, it could not grant the requested waiver because Congress said that PSPs must be compensated within nine months.^{33/} Section 276, however, did no such thing. Section 276 ordered the Commission to “take all actions necessary (including any reconsideration)” within nine months of enactment of the 1996 Act “to prescribe regulations that ... ensure that all payphone service providers are fairly compensated.”^{34/} Congress thus did not simply order compensation to begin; rather, it required the Commission to say when payments must begin under rules embodying the Commission’s determination of what constitutes “fair” compensation. Congress was explicit that the rules were to be in place within nine months, but said nothing about the deadline for payments. The language of the statute cannot save the Bureau’s decision.

The Bureau also attempted to defend its decision by reciting earlier Commission statements, stating that “[a]s the Commission already stated ‘because Section 276 creates no exceptions for calls facilitated by reseller or debit card providers, such exemptions from the obligation to pay compensation, even on an interim basis, would be contrary to the congressional mandate....’”^{35/} However, whether any category of calls is exempt from compensation obligations is not a question posed by AirTouch’s waiver petition; the issue

^{33/} See, e.g., *Bureau Order*, para. 98 (“Congress specifically provided for setting an expedited deadline for Commission action.”).

^{34/} 47 U.S.C. § 276(b)(1).

^{35/} *Bureau Order*, para. 93 (quoting *First Payphone Order*, 11 FCC Rcd at 20,586).

is whether the Bureau may undermine the Commission's fair compensation plan^{36/} by granting a waiver to the LECs and denying a reciprocal waiver to AirTouch under comparable circumstances. By the Commission's own definition, forcing payment on an unwilling buyer is unfair and anticompetitive, and therefore violates Section 276.

B. The Bureau Order Is Not Part of a Rational Waiver Policy

The Commission's obligation to regulate in the public interest requires that when a waiver request "is stated with clarity and accompanied by supporting data, [it is] not subject to perfunctory treatment, but must be given a 'hard look.'"^{37/} The *Bureau Order* failed this test. The Bureau did not address in any meaningful way either the legal basis or the factual circumstances cited by AirTouch in support of its waiver petition. Instead, the *Bureau Order* contains a series of disconnected and conclusory statements, many of which concern matters unrelated to AirTouch's arguments. Because the decision was not based on any rational waiver policy, as required,^{38/} it was arbitrary and capricious.

^{36/} The Bureau inexplicably ignored the fact that in the same order quoted by the Bureau the Commission plainly established transmission of Coding Digits as a prerequisite for the compensation obligation.

^{37/} *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

^{38/} *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1165 (D.C. Cir. 1990).

**1. The Bureau Did Not Address the Changed Circumstances
that Support the Waiver**

The Bureau's discussion of the AirTouch Waiver Petition began by "not[ing] that carriers have known since the adoption of the 1996 Act ... that Congress required in Section 276 that PSPs be compensated for 'each and every call.'"^{39/} But as shown above, Section 276 itself is silent as to the conditions of payment; Congress left that for the Commission. The language of the statute therefore is not decisive.

Of greater relevance is the fact that all interested parties have known since the adoption of the 1996 Act that Congress required the Commission to adopt a fair compensation plan, and have known since September 1996 that the plan adopted by the Commission required LECs to transmit Coding Digits as a prerequisite to the obligation to their right to receive per-call compensation. More specifically, LECs knew this one year before they requested a waiver that would allow them to receive compensation without transmitting Coding Digits. The LECs' waiver request, coming on the eve of the effective date of the per-call compensation plan, plainly constituted an adverse changed circumstance, as AirTouch stated in its Petition for Waiver.

The *Bureau Order* stated that "parties have been on notice that they must pay per-call compensation,"^{40/} but this statement does not tell the whole story. AirTouch understood the Commission to mean precisely what it said in the *Reconsideration Order*:

^{39/} *Bureau Order*, para. 90.

^{40/} *Id.*, para. 90.

that no payment obligation would arise until LECs transmitted Coding Digits. The Bureau clearly has the same understanding.^{41/} At bottom, the Bureau's denial of AirTouch's request is based on nothing more than the conclusion that granting the waiver will result in PSPs not being compensated. "It is manifest error," however, "to deny a waiver on the ground that there would be a violation in the absence of the waiver sought."^{42/} The *Bureau Order*'s basis for denying the waiver was so insubstantial as to render the denial an abuse of discretion.^{43/}

The Bureau also stated "[w]e cannot at this late date find that certain parties, although they have continued to use payphones to make subscriber 800 [calls] ... may be relieved of the statutory requirement that there be compensation for these calls as required by Section 276."^{44/} Again, the Bureau misunderstands Section 276. The statute requires payment, but also requires the Commission to set the conditions of payment. Because the conditions of payment established by the Commission have not been satisfied, AirTouch should not be forced to pay for services it and its customers do not want. Moreover, the Bureau wrongly assumed, without any support in the record, that AirTouch and its customers are the sole source of calls to those customers' 800 numbers. In fact, the

^{41/} See *id.*, para. 13.

^{42/} *WAIT Radio*, 418 F.2d at 1158, n.12.

^{43/} *Id.*

^{44/} *Bureau Order*, para. 93 (emphasis added).

present situation attracts callers to payphones to place calls to AirTouch's Toll-Free Numbers and, where Coding Digits are not available, forces AirTouch to pay compensation for calls that are not wanted. If these calls were not answered no compensation would be due because they would not be "completed calls". Unwanted calls should be treated in the same way, with no compensation being paid.

The Bureau also confused the economic harm incurred by AirTouch with economic benefits reaped by others, noting that "IXCs that provide interexchange service to payors such as AirTouch ... already have been relieved of part of their burden of paying carrier common line access charges to LECs insofar as those charges previously subsidized LEC payphone operations" and that "IXCs already have increased interstate rates and implemented per-call charges for payphone compensation."^{45/} These statements, rather than supporting denial of the waiver, justify a grant. AirTouch has incurred additional charges from IXCs, which it cannot pass through to its customers who have chosen not to accept calls and related charges from payphones.

2. The Bureau's Discounting of Harm to AirTouch Is Arbitrary and Capricious

The Bureau's perfunctory treatment of AirTouch's request is perhaps most striking in the Bureau's attempt to discount the substantial harm suffered by AirTouch. Significantly, the Bureau did not dispute AirTouch's showing of the financial consequences of being forced to pay unwanted and unavoidable charges. Indeed, the

^{45/} *Bureau Order*, para. 98.

Bureau conceded that AirTouch is harmed.^{46/} Nonetheless, according to the Bureau, “the potential harm from the absence of compensation to PSPs would be greater than the potential harm to AirTouch ... from the inability to block certain payphone calls.”^{47/}

The Bureau offered no support for its conclusion that PSPs would suffer greater harm than AirTouch. When the Bureau granted a waiver to the LECs and PSPs, it specifically cited potential -- but unspecified -- economic harm they would suffer.^{48/} In contrast, AirTouch put forth specific information about the extent of its harm. This harm may in fact be greater than that suffered by any LEC or PSP. Nonetheless, the Bureau simply concluded, without discussion, that AirTouch’s harm is de minimis. As the Court has held, however, “[o]nce an agency agrees to allow exceptions to a rule, it must provide

^{46/} *Bureau Order*, para. 97 (“The waivers granted in the *[LEC] Waiver Order* and this order ... will, we recognize, require AirTouch ... to pay compensation for certain calls without the ability to block those calls on a real-time basis.”).

^{47/} *Id.*, para. 97 (emphasis added). The Bureau’s basis for its conclusion that AirTouch, but not PSPs, should suffer harm, was that Section 276 required the Commission to “adopt rules that provide PSPs with per-call compensation, and the waiver [*i.e.*, grant of a waiver to the LECs and denial of a waiver to AirTouch] will most expeditiously lead to this result.” *Id.* As shown above, the Bureau’s focus on ensuring compensation for PSPs regardless of the cost to other parties, rather than enforcing the fair compensation plan actually adopted by the Commission, violates Section 276 and is arbitrary and capricious, because a waiver may not be denied on the ground that there would be a violation in the absence of the waiver sought. *WAIT Radio*, 418 F.2d at 1158 n.12.

^{48/} *LEC Waiver Order*, para. 13.

a rational explanation if it later refuses to allow exceptions in cases that appear similar.”^{49/}

This holding is in accord with *WAIT Radio*’s mandate that a decision to grant or deny a waiver must be based on an “appropriate general standard” or a “rational waiver policy.”

The *Bureau Order* is not consistent with any rational waiver policy.^{50/}

The Bureau also made the ludicrous conclusion that AirTouch contributed to its harm because “it has chosen to block calls” as a business decision while other paging companies have not.^{51/} As AirTouch explained in its Petition for Waiver, AirTouch offered its Toll-Free Number customers the option of having calls blocked in order to avoid compensation charges. This choice is the very essence of the fair compensation plan adopted by the Commission and upheld by the Court.^{52/} Such “arbitrary failure to

^{49/} *Green County Mobilephone, Inc. v. FCC*, 765 F.2d 235, 237 (D.C. Cir. 1985).

^{50/} The Bureau noted that the waiver its granted to the LECs and PSPs was “limited,” *Bureau Order*, para. 96, but failed to acknowledge that AirTouch’s request was equally limited. Again, the Bureau failed to apply a hard look to the request.

^{51/} *Bureau Order*, para. 93, n.280.

^{52/} Indeed, this is the very cornerstone of a competitive market. This Commission repeatedly has acknowledged that the paging market is highly competitive. This fact is confirmed by the different approaches to payphone compensation taken by various paging carriers. One effect of the *Bureau Order* is to lessen this competition by forcing all paging carriers to offer the same plan. This is the hallmark of regulated markets, not competitive ones.

give proper consideration to the core of [AirTouch's] claim" clearly is an abuse of discretion.^{53/}

C. The Bureau Erroneously Concluded that the Inability to Block Calls Does Not Undermine a Market-Based Compensation Plan

The *Bureau Order* concluded that "the inability to block payphone calls [does not] undermine[] the market-based approach for payphone compensation."^{54/} The Bureau failed to explain how it came to this conclusion, which contradicts statements made by the Commission to justify its market-based compensation plan and relied on by the Court when it affirmed that plan. According to the Commission, "[c]arriers have significant leverage within the marketplace to negotiate for lower per-call compensation amounts ... and to block subscriber 800 calls from payphones when the associated compensation amounts are not agreeable to the carrier."^{55/} The Court relied on such assurances that selective call blocking would serve as a fundamental check on a PSP's ability to force unavoidable payments, stating: "a 'buyer' (the carrier or the 800 service subscriber) will have the option of rejecting a 'seller's' (the PSP) excessively priced service")."^{56/}

^{53/} *Santana-Figueroa v. INS*, 644 F.2d 1354, 1357 (9th Cir. 1981).

^{54/} *Bureau Order*, para. 94.

^{55/} *Second Payphone Order*, para. 97. Thus, the Bureau's claim that "the establishment of a default per-call compensation rate was itself intended to address the possibility of unequal bargaining power between PSPs and carriers," *Bureau Order*, para. 95, is not completely accurate. Call blocking clearly was an important component.

^{56/} *Illinois Public Telecommunications Ass'n v. FCC*, 117 F.3d at 567.

Notwithstanding the random statements that follow (and purportedly support) the Bureau's conclusion that call blocking is not a necessary component of a market-based plan -- including the claim that Coding Digits are required only to "assist in identifying [LECs and PSPs] to compensation payors, not because they also can be used for blocking calls from payphones during the interim period while the default per-call rate is in effect,"^{57/} the fact remains that when Coding Digits are not transmitted, calls cannot be blocked, and when calls cannot be blocked, the compensation plan is inequitable, because the Commission specifically "define[d] fair compensation as where there is a willing seller and a willing buyer at a price agreeable to both,"^{58/} and specifically said that "to be eligible for [per-call] compensation, payphones will be required to transmit payphone coding digits as a part of their ANI."^{59/} Again, the Bureau Order did not address these circumstances.

Finally, it is of no consequence to AirTouch that "[p]ayphones that are not capable of transmitting payphone-specific coding digits must maintain the default rate established in the *[Second Payphone Order]* for the waiver period until FLEX ANI coding digits are

^{57/} *Bureau Order*, para. 94.

^{58/} *First Payphone Order*, para. 52.

^{59/} According to the Bureau, "the availability of payphone-specific coding digits was never a *sin [sic]* qua non for the payment of payphone compensation." *Bureau Order*, para. 64. This is incorrect. See *Reconsideration Order*, para. 64.

available."^{60/} That default rate is the subject of further appeal proceedings, before both the Commission and the Court, and may be found to be unlawful (as was the Commission's original default rate). In any event, Toll-Free Number subscribers already wish to avoid the charges, and cannot do so, for the sole reason that LECs have not complied with their unambiguous obligation to provision Coding Digits.^{61/}

^{60/} *Bureau Order*, para. 95.

^{61/} According to the Bureau, "many LECs were not prepared on October 7, 1997 to implement FLEX ANI due to many factors including their interpretation of the requirements of the *Payphone Orders*...." *Bureau Order*, para. 56. However, the Bureau has specifically stated that FLEX ANI was mandated in the *Payphone Orders*. *Bureau Order*, para. 61. Thus, there was no legitimate basis for the LECs' claimed confusion about their obligation to implement FLEX ANI.

IV. CONCLUSION

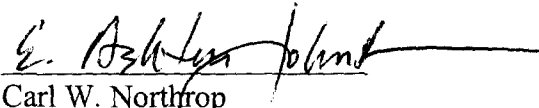
WHEREFORE, the foregoing premises having been duly considered, AirTouch respectfully requests that the Commission grant this Application for Review and grant AirTouch a waiver of the obligation to pay per-call compensation for any toll-free call placed from to AirTouch's customers from a payphone that does not transmit payphone-specific coding digits.

Respectfully submitted,

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Its Attorneys

April 8, 1998

WDC-82622v1

CERTIFICATE OF SERVICE

I, Michelle A. Harris, certify that on this 8th day of April, 1998, I caused true and correct copies of the foregoing Application for Review of AirTouch Paging to be sent by first-class United States mail, postage prepaid, or by hand, to the following:

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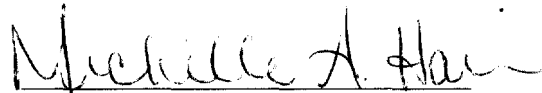
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